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**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.  
Washington, D.C. 20463

SECRETARIAT

2004 NOV -3 A 10: 59

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

RAD Referral: 04L-04  
RAD Referral Date: May 25, 2004  
Date Activated: July 21, 2004

Expiration of Statute of  
Limitations: January 31, 2007<sup>1</sup>

**SOURCE:**

**RAD REFERRAL**

**RESPONDENTS:**

Pro-Life Campaign Committee and  
Pablo Gersten, as treasurer

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 431(8)(A)(i)  
2 U.S.C. § 431(9)(A)(i)  
2 U.S.C. § 434(a)(4)(A)(i) and (iv)  
2 U.S.C. § 434(b)(2) and (4)  
2 U.S.C. § 434(b)(3)(A)  
11 C.F.R. § 104.3(a)(2) and (b)(1)  
11 C.F.R. § 104.5(c)(1)(i)(A)  
11 C.F.R. § 104.5(c)(2)(i)(A)  
11 C.F.R. § 104.18(a)(1)(i) and (ii)  
11 C.F.R. § 104.18(a)(2)

**INTERNAL REPORTS CHECKED:** Disclosure Reports and Internal Indices  
Requests for Additional Information

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

This referral from the Reports Analysis Division ("RAD") concerns chronic late reporting  
and misreporting during 2001 and 2002 by the Pro-Life Campaign Committee and Pablo Gersten,

as treasurer ("the Committee").<sup>2</sup>

According to the referral, the Committee initially submitted its 2001 Year-End and its 2002 April and July Quarterly Reports on paper, even though it was required to file each of these reports electronically, and filed its 2002 October Quarterly late; these reports disclosed \$182,580 in total receipts and \$71,883 in total disbursements. On February 10 and 11, 2003, the Committee electronically filed these reports, disclosing more than \$5 million in each of total receipts and total disbursements.<sup>3</sup> The paper reports were not considered "filed," and by the time the electronic reports were received, RAD had already referred late reporters to the Administrative Fines program according to its internal procedures.

As set forth in more detail below, this Office recommends that the Commission make reason to believe findings against the Committee for its late and misreporting. In addition, we recommend an investigation focused on the reasons underlying the substantial discrepancies in the Committee's initial paper submissions and its electronic reporting during 2001 and 2002.

<sup>2</sup> The Committee, based in Sterling, Virginia, first filed a Statement of Organization with the Commission in March 2000, listing no affiliated or connected organizations. In May 2001, the Committee filed a notification of multicandidate status.

<sup>3</sup> The vast majority of the receipts are unitemized contributions and approximately 90% or more of the disbursements are to telemarketing companies. During 2001 and 2002, the Committee made approximately \$27,000 in contributions to federal campaigns and no independent expenditures.

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**II. FACTUAL AND LEGAL ANALYSIS**

**A. Facts**

On July 30, 2001, the Committee submitted its 2001 Mid-Year Report on paper, disclosing receipts of \$38,756 and disbursements of \$26,754. Thereafter, on May 12, 2003, 650 days late, the Committee electronically filed its 2001 Mid-Year Report, disclosing receipts of \$839,560 and disbursements of \$828,557.<sup>4</sup> Specifically, the electronic report showed unitemized contributions of \$834,685, representing 99% of the total receipts, as opposed to just \$35,082 in unitemized contributions initially shown on the paper report.<sup>5</sup> With respect to disbursements, the electronic report disclosed operating expenditures of \$819,537 (as opposed to \$17,234 on the paper report), with \$46,800 in list rentals and with 26 weekly payments, averaging \$28,500 weekly, to Capitol Communications, Inc. ("Capitol Communications"), an Arizona telemarketing firm, for fundraising services; the disbursements to Capitol Communications represented 90% of the total disbursements.

The Committee submitted its 2001 Year-End Report on paper on January 29, 2002, showing receipts of \$55,961 and disbursements of \$11,629. On February 26, 2002, RAD sent the Committee an "MS-P Notice", which notifies the Committee that it failed to file an original report in an electronic format. On March 8, 2002, RAD sent the Committee an "RQ-7 Notice", which notifies the Committee that it failed to file a report. The Committee did not file its 2001

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<sup>4</sup> The 2001 Mid-Year Report was not a part of the RAD referral because the receipts and disbursements on the paper report were under \$50,000, and it appeared that the report did not need to be filed electronically. See 11 C.F.R. § 104.18(a)(1)(i) and (ii). However, the Office of General Counsel is including this disclosure report because the receipts and the disbursements on the amended report exceeded \$50,000. Thus, the initial report should have been filed electronically.

<sup>5</sup> On the electronic report's summary page, the Committee listed \$834,685 as itemized receipts and \$975 as unitemized receipts. The summary page appears to be in error because the Committee listed \$834,685 as unitemized contributions on Schedule A (List of Receipts) of the report. Thus, it appears that the amended report's summary page should have listed \$975 as itemized receipts and \$834,685 as unitemized receipts.

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1 Year-End Report electronically until February 10, 2003, 375 days late. The electronic report  
2 showed receipts of \$926,837 and disbursements of \$891,630. On May 9, 2003, the Committee  
3 filed an amended 2001 Year-End Report, showing receipts of \$924,061 and disbursements of  
4 \$891,206. From the paper report to the amended report, the unitemized contributions,  
5 representing 99% of the total receipts, increased from \$45,028 to \$920,537. With respect to  
6 disbursements, the amended report showed operating expenditures of \$891,206, in contrast to the  
7 \$11,629 found on the paper report, with Capitol Communications receiving 92% of the total  
8 through 26 weekly payments averaging approximately \$34,000 per week.

9 The Committee filed its April 2002 Quarterly Report on paper on July 21, 2002 with  
10 receipts of \$46,458 and disbursements of \$20,723. The Committee had already received an  
11 RQ-7 notice on May 6, 2002 for failure to file a report. On August 1, 2002, RAD sent an MS-P  
12 notice to the Committee informing it that the report must be filed electronically. The Committee  
13 filed the April 2002 Quarterly Report electronically on February 11, 2003, 302 days late. The  
14 electronic report showed receipts of \$1,004,813 and disbursements of \$975,014. The Committee  
15 amended the electronic report on May 13, 2003 to reflect receipts of \$996,671. Thus, for the  
16 April 2002 Quarterly Report, the Committee reported an increase of approximately \$955,000 in  
17 both receipts and disbursements from the initial paper report to the amended electronic report.  
18 Unitemized contributions on the amended report, representing 99% of total receipts, were  
19 \$991,334 as compared to \$40,921 on the initial paper report. On the disbursements side, the  
20 operating expenditures increased to \$965,014 on the amended report from \$15,724 on the paper  
21 report, with Capitol Communications receiving 96% of the amended total through 12 weekly  
22 disbursements averaging approximately \$77,000 per week. Based on the Committee's electronic

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1 reporting, the 2002 April Quarterly and all other 2002 reports were required to be filed  
2 electronically. *See* 11 C.F.R. § 104.18 and footnote 4, *supra*.

3 The Committee initially filed its July Quarterly 2002 Report on July 19, 2002 on paper  
4 with receipts of \$41,405 and disbursements of \$12,777. Despite receiving the MS-P notice and  
5 an RQ-7 notice on August 1, 2002 and August 2, 2002, respectively, the Committee did not file  
6 its July 2002 Quarterly Report electronically until February 10, 2003, 210 days late. The  
7 electronic report disclosed receipts of \$733,049 and disbursements of \$706,144. The Committee  
8 amended the July 2002 Quarterly Report on May 9, 2003 to show receipts of \$737,525 and  
9 disbursements of \$706,329, or an increase of approximately \$695,000 in both receipts and  
10 disbursements from the initial report to the amended report. The amended report showed  
11 unitemized contributions, representing 99% of total receipts, of \$734,028, compared to  
12 unitemized contributions of \$35,916 shown on the initial report. The itemized contributions  
13 were reduced to \$2,500 on the amended report from \$5,490 on the initial report. The  
14 Committee's operating expenditures increased to \$706,329 on the amended report from \$12,778  
15 on the initial report, including 13 weekly payments to Capitol Communications, representing  
16 94% of the total disbursements, averaging approximately \$51,000 per week.

17 Finally, although the Committee filed its initial October 2002 Quarterly Report  
18 electronically, it did not file this report until February 11, 2003, 119 days late. For this period,  
19 the Committee reported receipts of \$636,542 and disbursements of \$625,413. The Committee  
20 filed an amended report on May 9, 2003 showing receipts of \$608,621, and no change in the  
21 amount of the disbursements. The amended report contains unitemized contributions of  
22 \$606,771, representing 99% of the total receipts. Ninety-five percent of the disbursements were  
23 made to Capitol Communications or HCC Political Advertising, which like Capitol

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Communications, is based in Mesa, Arizona. Capitol Communications received nine weekly payments, averaging \$35,492 per week, and HCC Political Advertising received nine weekly payments, averaging approximately \$30,000 per week.

## **B. Analysis**

### **1. Late Filing and Misreporting**

Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with 2 U.S.C. § 434(a). Political committees other than authorized committees of a candidate that file quarterly reports shall file them no later than the 15th day after the last day of each calendar quarter. 2 U.S.C. § 434(a)(4)(A) and (B). Political committees required to file reports with the Commission must file the reports in an electronic format if the political committee has received contributions or has reason to expect to receive contributions aggregating in excess of \$50,000 in any calendar year or the political committee or other person has made expenditures aggregating in excess of \$50,000 in any calendar year. *See* 11 C.F.R. § 104.18(a)(1)(i) and (ii). A report that is filed on paper that should have been filed electronically does not satisfy a committee's filing obligations. 11 C.F.R. § 104.18(a)(2).

Each report shall disclose for the reporting period and calendar year, the total amount of all receipts and total amount of all disbursements. *See* 2 U.S.C. § 434(b)(2) and (4) and 11 C.F.R. § 104.3(a)(2) and (b)(1). Each report shall also identify each person who makes a contribution to the reporting committee during the reporting period, whose contributions or contributions have an aggregate amount or value in excess of \$200 within the calendar year. *See* 2 U.S.C. § 434(b)(3)(A).

As set forth above, the Committee failed to file timely its 2001 Mid-Year and Year-End Reports, and its 2002 April, July and October Quarterly Reports; these reports were late for

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1 periods ranging from four months to a year and a half. In addition, there were dramatic  
2 differences, amounting to millions of dollars, in the total receipts and disbursements shown in the  
3 Committee's initial paper reports and the subsequent electronic reports covering the same time  
4 periods. Even though a paper report submitted to the Commission does not comply with a  
5 committee's filing obligation, it is nonetheless physically accepted and released publicly as a  
6 "Miscellaneous Report to FEC," and, if inaccurate, still has the potential to mislead the public as  
7 to a committee's activities.

8 Based upon the foregoing, the Office of General Counsel recommends that the  
9 Commission find reason to believe that Pro-Life Campaign Committee and Pablo Gersten, as  
10 treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i) by untimely filing reports and 2 U.S.C. § 434(b)(2)  
11 and (4) by misreporting receipts and disbursements.

## 12 **2. Knowing and Willful**

13 "Knowing and willful" actions are those that are "taken with full knowledge of all the  
14 facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed.  
15 May 3, 1976). The knowing and willful standard requires knowledge that one is violating the  
16 law. *FEC v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985 (D.N.J. 1986). A knowing  
17 and willful violation may be established by "proof that the defendant acted deliberately and with  
18 knowledge that the representation was false." *U.S. v. Hopkins*, 916 F.2d. 207, 214-15 (5<sup>th</sup> Cir.  
19 1990). A knowing and willful violation may be inferred "from the defendants' elaborate scheme  
20 for disguising" their actions and their "deliberate convey[ance of] information they knew to be  
21 false to the Federal Election Commission." *Id.* "It has long been recognized that 'efforts at  
22 concealment [may] be reasonably explainable only in terms of motivation to evade' lawful  
23 obligations." *Id.* at 214, citing *Ingram v. United States*, 360 U.S. 672, 679 (1959).

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That is not to say that after an investigation there may not be a basis to recommend a

knowing and willful disposition, only that there is an insufficient basis to recommend knowing

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1 and willful findings at this time

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3 **III. INVESTIGATION**

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5 The Committee

6 was referred twice to the Administrative Fines Program for untimely filing of its 2002 30-Day  
7 Post-General and 2002 Year-End Reports; both of these reports were filed prior to preparing the  
8 reason to believe mailgrams for those reporting periods. During the process, the Committee  
9 contended that the reason the reports were not filed until February 2003 (the same time that the  
10 electronic versions of the reports involved in this matter were filed) was that the experienced  
11 employee responsible for preparing FEC reports ran into problems in late 2002 because of her  
12 unfamiliarity with the software needed to file electronically, a new person hired to file  
13 electronically left suddenly after a few weeks, and it took the next person hired some time to  
14 learn how to file the reports electronically. The Commission rejected the Committee's challenge  
15 and the Committee paid civil penalties of \$12,000 and \$6,000 for its untimely filings of the 2002  
16 30-Day Post-General and 2002 Year-End Reports, respectively. While the Committee's  
17 explanation for its inability to file timely reports may be advanced again for this matter, it does  
18 not explain the wide discrepancies between the paper and electronic versions of the 2001 Mid-  
19 Year and Year-end Reports and the 2002 April and July Quarterly Reports; according to the  
20 Committee's defense in the Administrative Fines process, the preparer of the paper reports was  
21 an experienced employee. We do not know why the Committee's initial submissions to the

1 Commission apparently understated to a huge degree the amount of receipts and disbursements  
2 over several reporting periods, particularly when the total unitemized contributions received  
3 (99% of all receipts) and payments made to telecommunications vendors (over 90% of all  
4 disbursements) should have been known and documented during each reporting period.

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IV. RECOMMENDATIONS

1. Open a MUR;
2. Find reason to believe that the Pro-Life Campaign Committee and Pablo Gersten, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i) by failing to file timely disclosure reports;
3. Find reason to believe that the Pro-Life Campaign Committee and Pablo Gersten, as treasurer, violated 2 U.S.C. § 434b(2) and (4) by misreporting receipts and disbursements;
4. Approve the appropriate Factual and Legal Analysis;
- 5.
6. Approve the appropriate letter.

Lawrence H. Norton  
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Associate General Counsel  
for Enforcement

11/2/04  
Date

BY:

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